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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,584	11/24/2003	Charles E. Eberling	28679/04546 (00-051 US)	5054

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CLEVELAND, OH 44114

EXAMINER

BUTLER, DOUGLAS C

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/720,584

Applicant(s)

EBERLING ET AL.

Examiner

Douglas C. Butler

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 <sup>remain</sup> ~~are~~ subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. An action on the merits of claims 1-8 and 10-20 considered readable on the elected Species A (Figs. 3-7) is included in this office action with claim <sup>9</sup>~~8~~ withdrawn from consideration. 37 CFR 1.142(b). Election was made without traverse in the response filed Oct. 4, 2004.

2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

3. The submitted prior art has been considered.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


5. Claims 1-8 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over submitted Ho et al (6,209,971) in view of Davis et al (3768875) or Gerum et al (6234587) or Klatt (3866981).

The principal reference to Ho et al discloses the invention substantially as claimed. However, the principal reference to does not disclose the feature of the modulator and brake actuator being integrated.

Each one of the secondary references to Davis et al (Fig. 5), Gerum et al (Figs. 1A, 1B, 2A, 2B, 6), and Klatt (single figure) discloses making the modulator, brake cylinder and related components integral in order to save space and enhance the ability of a brake repairman to maintain and service the brake assemblies.

It would have been obvious at the time the invention was made to one having ordinary skill in the art to which the invention pertains to modify the principal reference to Ho et al to have or make the pneumatic brake actuator integral with the modulator as taught by each of the secondary references to Davis et al, Gerum et al and Klatt in order to aid in the repair or maintenance and to save space.

6. Any inquiry concerning this communication should be directed to Exmr Butler at telephone number (703) 308-2575.

 1-4-2005  
DOUGLAS C. BUTLER  
PRIMARY EXAMINER  
AU 3683

Butler/vs  
December 21, 2004